

APPENDIX A

COMPLIANCE AUDIT

1. This Appendix A is incorporated by reference into the Consent Decree resolving United States of America v. Old Dutch Mustard Company, Inc., d/b/a Pilgrim Foods (“Pilgrim”) filed with the United States District Court, District of New Hampshire (“the Consent Decree”).

2. Pilgrim shall retain an independent environmental auditing firm (the “Auditor” or “Audit Firm”) to conduct a multimedia environmental compliance audit in accordance with this Appendix A (the “Audit”). The primary objectives of the Audit shall be: 1) to assess Pilgrim’s compliance with the statutes and regulations listed in Paragraph 6, as well as any permits issued under them, at Pilgrim’s Greenville, New Hampshire, facility (“Facility”) at the time of the audit; and 2) to identify at the Facility all violations of such statutes, regulations and permits committed from June 1, 2002 through the Audit Commencement Date pursuant to Paragraph 13 herein. In addition, any information gathered from the audit process shall be provided to the EMS Consulting Firm engaged pursuant to Appendix B of the Consent Decree for use in developing and implementing the Environmental Management System in accordance with Appendix B of the Consent Decree. Pilgrim shall direct the Auditor to implement the Audit consistent with the Consent Decree and to review EPA’s Multimedia Investigation Manual for guidance in implementing the Audit to the extent appropriate based on the scope and operations of the Pilgrim Facility. Pilgrim shall not, in any way, through its own actions

or through the actions of others, interfere with the ability of the Auditor to carry out the Audit independently in accordance with the Consent Decree.

For the purposes of Appendix A, a “violation” shall mean a set of facts which in the best professional judgment of the Auditor constitutes a circumstance of noncompliance with one or more of the Listed Statutes and Regulations or Environmental Permits identified pursuant to Paragraph 6 of this Appendix A. Identification by the Auditor of a “violation” does not constitute a legal opinion by the Auditor or any other party.

A. The Audit.

3. Not later than the date of lodging of this Consent Decree, Pilgrim shall propose to EPA for acceptance or rejection, the selection of an Audit Firm to conduct the Audit at the Facility. The Audit Firm must certify that its auditor(s): (a) meet the qualification requirements of ISO 14012 (1996(E)); and (b) have expertise and competence in the regulatory programs under federal and state environmental laws. The Audit Firm and its employees, agents and subcontractors who work on the Audit must not directly own any stock in Pilgrim or in any parent or subsidiary, must not be former Pilgrim employees, and must have no other direct financial stake in the outcome of the Audit conducted pursuant to the Consent Decree. If Pilgrim has any other contractual relationship with the Audit Firm, Pilgrim shall disclose to EPA such past or existing contractual relationships. Pilgrim shall submit to EPA a description of the Audit Firm’s

qualifications and the certifications required above not later than the date of lodging of this Consent Decree. EPA will notify Pilgrim in writing of its acceptance or rejection of the Audit Firm as expeditiously as possible following the date of lodging.

4. If EPA determines that the proposed Audit Firm does not meet the qualifications set forth in the previous paragraph, or that past or existing relationships with Pilgrim would affect its ability to exercise the independent judgment and discipline required to conduct the compliance audit, such Audit Firm shall be rejected and another Audit Firm shall be proposed by Pilgrim within 30 days of its receipt of EPA's determination.

5. Pilgrim shall provide a copy of the text of this Consent Decree and Appendices A and B to each employee of the Audit Firm who is retained to carry out any of the provisions of the Audit required by the Consent Decree, and Pilgrim shall be responsible for all site specific health and safety training requirements for the Audit Firm so it can effectively and safely conduct the Audit.

6. The Audit shall assess Pilgrim's compliance at the Facility at the time of the Audit with the following laws and all regulations corresponding thereto (collectively the "Listed Statutes and Regulations"), and identify with respect to the Facility all violations of such laws and regulations committed from June 1, 2002 through the Audit Commencement Date pursuant to Paragraph 13, herein, or with the terms and conditions

of any permits issued under any of the Listed Statutes and Regulations (the

“Environmental Permits”):

- a. Clean Water Act, 33 U.S.C. §§ 1251, et seq.;
- b. Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.;
- c. Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.;
- d. Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11001, et seq.;
- e. Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., insofar as it relates to PCBs and asbestos management;
- f. Clean Air Act, 42 U.S.C. §§ 7401, et seq.;
- g. Safe Drinking Water Act, 42 U.S.C. §§ 300f, et seq.; and
- h. All applicable state and local environmental laws relating to clean water, wetlands, clean air, and toxic substances.

7. The Audit shall include, but not be limited to, an evaluation of the Facility’s (a) operating procedures and practices; (b) process and non-process wastewater pollutants, storm water pollutants, process and non-process wastewater and storm water treatment, and process and non-process wastewater and storm water discharges; (c) raw materials handling, storage, and management, especially with regard to (i) potential

pollutants resulting from those materials exposed to precipitation, and (ii) any potential filling of wetlands or other waters of the United States; (d) oil storage capacity and storage methods; (e) oil spill prevention control and countermeasure plans; (f) air pollutant emissions, emissions controls, and maintenance practices for any such controls; (g) solid and hazardous waste generation, handling, storage and disposal; and (h) monitoring, record keeping and reporting procedures, as these various activities relate to Pilgrim's compliance with the Listed Statutes and Regulations, and with Pilgrim's compliance with the terms and conditions of any Environmental Permits.

8. The Audit shall be conducted in accordance with the primary objectives of the Audit as set forth in Paragraph 2 herein and according to audit protocols developed by the Audit Firm in consultation with Pilgrim.

B. Audit Work Plan.

9. Pilgrim shall provide all reasonable assistance to the Audit Firm in becoming familiar with its facilities, procedures and practices by providing records, plans, and any other documents and information necessary for the Audit Firm to become familiar with matters set forth in subparagraphs (a) through (l) below. In order for the Audit Firm to develop its audit work plan, the Audit Firm shall be familiar with the following at the Facility:

- (a) general facility layout, operations, and operating capacities;

- (b) water pollutant discharge sources and controls, including procedures and practices for handling and treating process wastewater and facility storm water;
- (c) procedures for storing and handling raw materials;
- (d) the Facility's oil capacity, oil storage and spill prevention control and countermeasure plan;
- (e) effluent monitoring, record keeping and reporting procedures and practices;
- (f) air pollutant emission sources, modifications made to those sources, and controls, including control operation and maintenance procedures and practices;
- (g) air emission monitoring, record keeping and reporting procedures and practices;
- (h) solid and hazardous waste generation, handling, storage and disposal procedures and practices;
- (i) solid and hazardous waste monitoring, record keeping and reporting procedures and practices;
- (j) procedures and practices for complying with EPCRA reporting requirements;
- (k) any current or pending environmental permits; and

- (l) any past, current or pending notices of violation, compliance orders, notices of abatement and Consent Decrees (including the Consent Decree).

10. Within 30 days of EPA's acceptance of the Audit Firm, the Audit Firm shall submit a proposed audit work plan ("Work Plan") to Pilgrim and EPA. The proposed Work Plan shall include audit protocols which shall, at a minimum, include a detailed checklist of each individual statutory, regulatory, and permit requirement, a detailed checklist of specific audit tasks, and a description of the work necessary to complete the audit program, but such protocols shall not restrict the Audit Firm from conducting such additional inquiries as may be necessary to accomplish the purposes of the Audit.

11. The proposed Work Plan shall also include schedules for conducting the Audit, completing all tasks set forth in the Work Plan, and reporting of Audit results, and the Work Plan shall include the names and resumes of those Audit Firm employees who will be primarily responsible for performance of the tasks set forth in the Work Plan.

12. EPA will review the Work Plan and, with written notice to Pilgrim, accept or reject it. Alternatively, EPA may accept portions of the Work Plan and identify the deficiencies in the remainder of the Work Plan. If EPA identifies deficiencies in the Work Plan, Pilgrim shall address EPA's comments and submit a revised Work Plan to EPA within 30 days after receiving EPA's comments. EPA's acceptance or rejection of the Work Plan is within its sole discretion and is not reviewable in court.

C. Audit Performance.

13. Pilgrim shall direct the Audit Firm to commence its Audit of the Facility within 30 days after EPA accepts the full Work Plan ("Commencement Date"). The on-site portion of the Audit shall be completed within 60 days after EPA's acceptance of the full Work Plan and in accordance with the Work Plan.

14. The Facility shall be reviewed for compliance as of the date of the Audit with the Listed Statutes and Regulations and Environmental Permits. The Audit Firm shall also conduct a review of Pilgrim's records, conduct a review of any state or federal records, interview Pilgrim employees, and take any other actions as necessary to determine Pilgrim's current compliance status and to identify all violations committed from June 1, 2002 through the Audit Commencement Date.

15. The Audit Firm shall perform at least one on-site inspection of the Facility as identified in the schedule submitted in the Audit Work Plan, and EPA may accompany the Audit Firm during its inspection(s) and shall have access to all units, areas, equipment, and structures at the Facility during the inspection(s) and at all other times.

16. The Audit Firm shall observe and review actual water, air, and toxics pollution control operation and maintenance procedures, and waste generation, handling, and disposal procedures at the Facility, and shall perform or recommend performance of appropriate testing, sampling or other procedures as needed to determine Pilgrim's present compliance with the Listed Statutes and Regulations or Environmental Permits.

EPA shall be given the opportunity to observe and review the testing, sampling or other procedures.

17. If, in the course of performing the Audit, the Audit Firm discovers a condition at Pilgrim's Facility that, in the Audit Firm's independent judgment, constitutes an imminent and substantial endangerment to human health or the environment, the Audit Firm shall immediately notify Pilgrim and EPA of the condition. Pilgrim shall immediately address and ameliorate the condition and immediately consult with EPA as to how best to eliminate it. Notwithstanding this provision, Pilgrim shall comply with all other applicable permit and regulatory requirements.

D. Audit Report.

18. The Audit Firm shall deliver a written draft Audit Report to Pilgrim and to EPA within 30 days following the completion of the on-site portion of the Audit at the Facility. Two copies of the Audit Report shall be provided to EPA. The Audit Firm shall also provide EPA with a copy of any letters or other correspondence sent to Pilgrim regarding the performance or the preliminary results of the Audit. Any such letters or correspondence shall be provided to EPA at the same time and in the same manner as they are provided to Pilgrim.

19. Pilgrim or EPA may submit any comments on such draft to the Audit Firm that prepared the draft Audit Report and to each other and may discuss the draft Audit Report with the Audit Firm.

20. Within 30 days of receipt of any comments from EPA, the Audit Firm shall make any revisions to the draft Audit Report it deems appropriate and issue a final Audit Report and submit such report to EPA and Pilgrim.

21. Pilgrim agrees not to attempt to use any state audit and/or privilege laws that would in any way restrict EPA's ability to obtain, review or use any of the information included in the Audit Report in any federal compliance or enforcement action.

22. The Audit Report shall describe in detail the results of the Audit, including, but not limited to, the following:

- a. the procedures followed during the Audit, including any deviation from the approved Work Plan;
- b. the Audit scope, including the period of time covered by the Audit and each statute against which environmental compliance was determined;
- c. the date(s) the on-site portion[s] of the Audit were conducted;
- d. identification of Audit team members for, as well as any Pilgrim and regulatory agency representatives observing, the Audit;
- e. the distribution for the Audit report;
- f. a summary of the Audit process and any obstacles encountered;

- g. Pilgrim's current compliance obligations at the Facility with regard to the Listed Statutes and Regulations and Environmental Permits;
- h. Pilgrim's current compliance status at the Facility with regard to the Listed Statutes and Regulations and Environmental Permits; to the Listed Statutes and Regulations and Environmental Permits;
- i. the violations of Listed Statutes and Regulations and Environmental Permits committed from June 1, 2002 through the Audit Commencement Date;
- j. any actual environmental harm observed or otherwise identified during the course of the Audit at the Facility and areas adjacent to the Facility, including, but not limited to, Pilgrim Stream, resulting from noncompliance with the Listed Statutes and Regulations and Environmental Permits;
- k. any other information that, in the judgment of the Audit Firm, merits review by EPA or Pilgrim; and,
- l. certification by the Audit Firm that the referenced Audit was conducted in accordance with Appendix A and the Work Plan.

E. Corrective Action Plan.

23. Within 15 days of receiving the final Audit Report for the Facility, Pilgrim shall conduct a root cause or other appropriate analysis of the identified violations and

evaluate any identified environmental harm as appropriate. Within 30 days of receiving the final Audit Report for the Facility, Pilgrim shall develop and submit to EPA for approval a Corrective Action Plan for expeditiously bringing the Facility into full compliance with respect to the identified current violations, and for evaluating, mitigating or addressing any environmental harm or threatened environmental harm resulting from the identified violation to the extent obligated by the Listed Statutes and Regulations and Environmental Permits. The Corrective Action Plan will also describe, including completion dates, improvements or modifications to Pilgrim's operating procedures and practices at the Facility necessary to ensure compliance with all Listed Statutes and Regulations and Environmental Permits. The Corrective Action Plan shall include specific deliverables, responsibility assignments, and a schedule for implementation of corrective steps, and shall be consistent with any applicable Listed Statutes and Regulations and Environmental Permits. The Corrective Action Plan may be accompanied by supporting information and a justification. If Pilgrim believes that any identified violation in the Audit Report does not constitute a violation, Pilgrim shall, as part of the written notice required in this paragraph, provide to EPA a detailed explanation of Pilgrim's views.

24. EPA will review the Corrective Action Plan and, with written notice to Pilgrim, accept it or identify the deficiencies, and explain why the proposed corrective steps set forth therein will not correct the violation(s) or, adequately correct, mitigate or

address any environmental harm to the extent obligated by the Listed Statutes and Regulations or Environmental Permits. If EPA does not accept the Corrective Action Plan, Pilgrim shall revise and resubmit the Corrective Action Plan within 30 days following receipt of EPA's written notice identifying and explaining the deficiencies. The resubmitted document shall address each identified deficiency. With written notice to Pilgrim, EPA will accept the resubmitted document or identify the deficiencies and explain each deficiency as provided above. Should EPA not accept the resubmission, Pilgrim shall have 10 days from receipt of the notice of deficiencies to cure the deficiencies that are identified. If EPA concurs that the deficiencies have been cured, EPA shall accept the final submission and notify Pilgrim in writing of that acceptance. If EPA determines that not all deficiencies have been cured, it may exercise the rights reserved to it in Paragraph 27. Alternatively, EPA may accept the Corrective Action Plan with respect to those findings for which there are no outstanding deficiencies and address the matters for which there are outstanding deficiencies under Paragraph 27. Pilgrim shall implement the approved Corrective Action Plan.

25. Nothing contained in this Consent Decree shall prevent Pilgrim from taking corrective steps before approval of the Corrective Action Plan to correct violations or adequately correct, mitigate or address environmental harm identified during an audit site visit or as audit findings. If requested by Pilgrim, EPA shall use best efforts to review and comment on the appropriateness of such corrective steps before Pilgrim takes them.

26. Until Pilgrim has implemented all corrective steps identified in the Corrective Action Plan, beginning with the first calendar quarter following the calendar quarter in which Pilgrim begins implementing the Corrective Action Plan, Pilgrim must certify to EPA in writing that it has implemented all corrective steps as specified in the Corrective Action Plan for the previous calendar quarter. Pilgrim shall submit each such certification to EPA on or before the 28th day following the close of the calendar quarter in which such corrective steps are conducted.

27. If a disagreement between Pilgrim and EPA regarding audit implementation, audit findings, or the appropriateness of all or a portion of the proposed Corrective Action Plan arises that cannot be resolved in a reasonable time period, EPA retains all authority and reserves all rights to take any and all actions authorized by law to address some or all of the audit findings, and Pilgrim reserves all of its defenses.

28. Nothing in this Appendix A shall in any way limit or restrict the rights of EPA or the United States to obtain monetary or injunctive relief with respect to violations not alleged in the Complaint, including without limitation violations disclosed pursuant to an audit.